

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

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To establish the Office of Administrative Hearings as a unified administrative tribunal and agency to hear certain contested cases and other administrative adjudicative matters arising under the laws of the District of Columbia and to provide for the agency's jurisdiction and structure, to establish the position of Chief Administrative Law Judge of the Office of Administrative Hearings and to provide for the position's powers and duties, to establish the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings and to provide for the Commission's powers and duties, to establish the position of Administrative Law Judge of the Office of Administrative Hearings and to provide for the position's powers and duties, to establish procedures for the appointment, reappointment, and discipline of Administrative Law Judges, to establish the position of Executive Director of the Office of Administrative Hearings and to provide for the position's powers and duties, to establish procedures for review of agency decisions by the Office of Administrative Hearings and interaction with those agencies, to establish procedures for administrative appeals and judicial review of orders of the Office of Administrative Hearings, to establish an external Advisory Committee to the Office of Administrative Hearings and to provide for the Advisory Committee's powers, and duties, to require the Mayor to conduct a study and issue a report on improving the quality of adjudications within the Bureau of Traffic Adjudication at the Department of Motor Vehicles, and to make necessary conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Office of Administrative Hearings Establishment Act of 2001".

New Unit B,
Chapter 18,
Title 2

Sec. 2. Purpose.

The purpose of this act is to establish within the executive branch of the District of Columbia government the Office of Administrative Hearings as an administrative tribunal to hear administrative adjudication cases arising under the laws of the District of Columbia. The Office of Administrative Hearings shall function as a unified adjudication agency and shall

provide access to a high-quality, fair, impartial, and efficient system of adjudicating cases at the administrative level.

Sec. 3. Findings.

The Council of the District of Columbia finds that:

(1) There is a need generally to modernize and improve administrative adjudication in the District of Columbia so that citizens and persons doing business in the District of Columbia consistently receive high-quality, fair, impartial, and efficient hearings in agency cases.

(2) Administrative adjudication in the District of Columbia presently suffers from the general perception, and in some cases the reality, of unqualified hearing officers who lack the qualifications to fairly and properly adjudicate the cases before them.

(3) Hearing officers in agency cases heard under District of Columbia law are generally employed by the agency responsible for enforcement of the law under which a case is brought, and therefore are often perceived to lack independence and to have a bias in favor of that agency.

(4) Establishing a unified administrative hearing office staffed by professionals with the sole function of hearing and adjudicating administrative hearings can modernize and improve the quality of administrative adjudication in the District of Columbia by eliminating potential conflicts of interest for administrative law judges, promoting due process, bringing about an appropriate level of consistency and efficiency in the hearing process, increasing the professional qualifications of administrative law judges, and by expediting the fair and just conclusion of contested cases.

(5) The cost effectiveness of administrative adjudication in the District of Columbia can be substantially improved over time through the establishment and operation of a unified, impartial, and properly managed administrative adjudication office.

Sec. 4. Definitions.

For the purposes of this act, the term:

(1) "Adjudicated case" means a contested case or other administrative adjudicative proceeding before the Mayor or any agency that results in a final disposition by order and in which the legal rights, duties, or privileges of specific parties are required by any law or constitutional provision to be determined after an adjudicative hearing of any type. The term "adjudicated case" includes, without limitation, any required administrative adjudicative proceeding arising from a charge by an agency that a person committed an offense or infraction that is civil in nature.

(2) "Administrative Law Judge," unless otherwise specified, means an Administrative Law Judge of the Office of Administrative Hearings.

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(3) "Administrative Procedure Act" means the District of Columbia Administrative Procedure Act, approved October 4, 1968 (82 Stat. 1203; D.C. Official Code § 2-501 *et seq.*).

(4) "Agency" shall have the meaning provided that term in section 3(3) of the Administrative Procedure Act (D.C. Official Code § 2-502(3)).

(5) "Commission" means the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings.

(6) "Contested case" shall have the meaning provided that term in section 3(8) of the Administrative Procedure Act (D.C. Official Code § 2-502(8)).

(7) "Fiscal year" means the period from October 1 through September 30 of the following year.

(8) "Hearing officer" means an individual, other than an agency director, whose permanent duties as an employee of the District of Columbia on the day prior to this act becoming applicable to his or her agency consisted in whole or in substantial part of regularly adjudicating administrative matters as required by law. The term "hearing officer" includes, without limitation, any person with a position bearing the title "Hearing Officer," "Hearing Examiner," "Attorney Examiner," "Administrative Law Judge," "Administrative Judge," or "Adjudication Specialist". Notwithstanding anything to the contrary in this paragraph, the term "hearing officer" does not include any employee holding an intermittent service, a temporary appointment of less than one year, or a term appointment of less than one year. The Mayor or the Commission may issue rules in accordance with section 14 to adjust the period of employee tenure required to qualify as a hearing officer, except that such rules may not require a period longer than one year prior to this act becoming applicable to an employee's agency.

(9) "Independent agency" shall have the meaning provided that term in section 3(5) of the Administrative Procedure Act (D.C. Official Code § 2-502(5)).

(10) "Interlocutory order" means any decision of an Administrative Law Judge in a matter other than an order as defined in this act.

(11) "Office" means the Office of Administrative Hearings as established by this act, and, unless otherwise stated, includes its Chief Administrative Law Judge and its Administrative Law Judges.

(12) "Order" shall have the meaning provided that term in section 3(11) of the Administrative Procedure Act (D.C. Official Code § 2-502(11)).

(13) "Party" shall have the meaning provided that term in section 3(10) of the Administrative Procedure Act (D.C. Official Code § 2-502(10)).

(14) "Person" includes individuals, partnerships, corporations, associations, and public or private organizations and entities of any character other than the Mayor, the Council, the courts, or an agency.

Sec. 5. Establishment of Office of Administrative Hearings.

(a) The District of Columbia Office of Administrative Hearings is established as an independent agency within the executive branch of the District of Columbia government in the form and manner prescribed by this act. The Office shall be responsible for the administrative adjudication of all cases to which this act applies.

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(b) The Office shall commence operations on October 1, 2003. On or after the effective date of this act, the Mayor may issue an executive order appointing an acting Chief Administrative Law Judge, pending his or her confirmation, and may authorize him or her to plan for the implementation of this act, including the commencement of operations of the Office.

(c) All funding, property, and full-time equivalent position authority associated with the administrative adjudication functions of the agencies to which this act becomes applicable by October 1, 2003 shall be transferred from those agencies to the Office by that date. All funding, property, and full-time equivalent position authority associated with the administrative adjudication functions of any agency to which this act becomes applicable after October 1, 2003 shall be transferred from that agency to the Office on or before the date that this act becomes applicable to that agency.

(d) Any hearing officer in an agency covered by this act shall be subject to all rights, privileges, and requirements of this act, but his or her position and related costs shall continue to be funded by his or her originating agency until personnel authority, property, records, and unexpended balances of appropriations, revenues, and other funds associated with an agency's carrying out the functions assigned to the Office under authority of this act are lawfully transferred to the Office.

(e) The Office shall be subject to the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §§ 2-301.01 *et seq.*), the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998, effective April 27, 1999 (D.C. Law 12-268; D.C. Official Code § 2-217.01 *et seq.*), the Office of the Chief Technology Officer Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 1-1401 *et seq.*), and the Office of Property Management Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 10-1001 *et seq.*).

Sec. 6. Jurisdiction of the Office and agency authority to review cases.

(a) As of October 1, 2003, this act shall apply to adjudicated cases under the jurisdiction of the following agencies:

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- (1) Department of Health;
- (2) Department of Human Services;
- (3) Board of Appeals and Review;

(4) Department of Consumer and Regulatory Affairs;

(5) All adjudicated cases in which a hearing is required to be held pursuant to sections 9(a) and 9(b) of the Youth Residential Facilities Licensure Act of 1986, effective August 13, 1986 (D.C. Law 6-139; D.C. Official Code §§ 7-2108(a) and 7-2108(b)), including licensing and enforcement matters arising under rules issued by the Child and Family Services Agency;

(6) All adjudicated cases required to be heard pursuant to section 3 of the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code § 8-802), and section 3 of the Illegal Dumping Enforcement Act of 1994, effective May 20, 1994 (D.C. Law 10-117; D.C. Official Code § 8-902);

(7) All adjudicated cases pertaining to tax-related issues heard by the Office of Tax and Revenue; and

(8) Department of Banking and Financial Institutions.

(b) In addition to those agencies listed in subsection (a) of this section, as of October 1, 2004, this act shall apply to adjudicated cases under the jurisdiction of the following agencies:

(1) Department of Employment Services, other than the private workers' compensation function;

(2) All adjudicated cases pertaining to special education heard by the D.C. Public Schools; and

(3) Taxicab Commission.

(c) Those agencies that are not included in subsections (a) or (b) of this section may refer individual cases to the Office of Administrative Hearings, with the approval of the Chief Administrative Law Judge, or elect, subject to the approval of the Mayor and upon such terms as the Mayor shall set, to be covered by this act.

(d) The Mayor may temporarily exempt an agency or class of cases from inclusion in the Office for a period of 2 years following the effective date of this act. The Mayor shall submit a report to the Council explaining the rationale for such an exemption within 30 days of initiating the exemption, and shall publish notice of the exemption in the District of Columbia Register.

(e) Nothing in this act shall be construed to grant a right to a hearing not created independently by a constitutional provision or a provision of law other than this act, except with regard to the discipline or removal of an Administrative Law Judge or the Chief Administrative Law Judge.

(f) Except as provided in subsection (h) of this section, no agency of the District of Columbia to which this act applies shall adjudicate contested cases under the jurisdiction of the Office of Administrative Hearings or employ hearing officers, either full- or part-time, for the purpose of adjudicating cases under the jurisdiction of the Office.

(g) Any case initiated by, or arising from a decision or action of, an agency or a portion of an agency in receivership shall not be heard by the Office unless the receiver has entered a binding agreement that any order issued by the Office in the matter would have the same force, effect, and finality as it would if the receivership did not exist.

(h) Nothing in this act shall be construed to limit the authority of an agency covered in subsections (a) and (b) of this section, if the authority exists pursuant to other provisions of the law, to have an agency head or one or more members of the governing board, commission, or body of the agency adjudicate cases falling within its jurisdiction in lieu of the Office. This authority may not be delegated in whole or in part to any subordinate employees of the agency.

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§ 2-1831.04

Sec. 7. Chief Administrative Law Judge.

(a) The Office shall be headed by a Chief Administrative Law Judge who shall be accountable and responsible for the fairness, impartiality, effectiveness, and efficiency of the Office.

(b) The Chief Administrative Law Judge shall:

(1) Be appointed by the Mayor, with the advice and consent of the Council;
(2) Serve a 6-year term and be eligible for reappointment by the Mayor, with the advice and consent of the Council, for a maximum of 2 terms as Chief Administrative Law Judge;

(3) Take an oath of office, as required by law, prior to the commencement of duties;

(4) Devote full-time to the duties of the Office and shall not engage in the practice of law, or perform any other duties that are inconsistent with the duties and responsibilities of the Chief Administrative Law Judge;

(5) Be a member in good standing of the District of Columbia Bar at the time he or she assumes office and throughout his or her tenure as Chief Administrative Law Judge;

(6) Be a resident of the District of Columbia or become a resident of the District of Columbia within 180 days of his or her taking office;

(7) Not be subject to removal from office before expiration of his or her term, except upon a written finding of the Mayor of good cause, subject to the right of appeal;

(8) Have the powers and duties specified in this act, and the powers, privileges, and immunities of an Administrative Law Judge; and

(9) Be appointed to the Excepted Service as a statutory officeholder pursuant to section 908 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.08).

(c) The Chief Administrative Law Judge shall be compensated at the Grade 18 level, Step 5, of the Mayor's Excepted Service Schedule.

(d) At the conclusion of his or her term or a period of service of at least 2 years, the Chief Administrative Law Judge shall have the right to assume a position as a full-time or part-time Administrative Law Judge for a full 10-year term; provided, that he or she shall have no such right if he or she was removed from office for cause, or if the Mayor makes a written finding within 60 days of the effective date of the Chief Administrative Law Judge's resignation or the end of the Chief Administrative Law Judge's term, whichever is earlier, that cause for removal existed at or before the conclusion of his or her period of service. Such a finding is subject to a right of appeal.

(e) A former Chief Administrative Law Judge serving pursuant to subsection (d) of this section shall hold a position entitled "Senior Administrative Law Judge." Upon becoming a Senior Administrative Law Judge, the rate of pay of any former Chief Administrative Law Judge shall be reduced to the same rate of pay as the Administrative Law Judge or Senior Administrative Law Judge then holding the highest grade in the Office. Thereafter, the Senior Administrative Law Judge's rate of pay may be adjusted in the same manner as the rate of pay of an Administrative Law Judge. After completing any full 10-year term, a Senior Administrative Law Judge may be reappointed to another full term in accordance with section 13(a), (b), and (c).

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Sec. 8. Powers and duties of the Chief Administrative Law Judge.

(a) The Chief Administrative Law Judge shall:

- (1) Supervise the Office of Administrative Hearings;
- (2) Oversee and administer assignment of Administrative Law Judges to preside over adjudicated cases heard by the Office;
- (3) To the extent he or she deems appropriate, establish internal classifications for case assignment and management on the basis of subject matter, expertise, case complexity, and other appropriate criteria;
- (4) Establish standard and specialized training programs for Administrative Law Judges;
- (5) Appoint, in accordance with applicable law and available funding, promote, discipline, and remove staff employed by the Office, other than Administrative Law Judges;
- (6) Provide for, or require completion of, continuing education programs for Administrative Law Judges and other employees of the Office deemed to be necessary or desirable;
- (7) Develop and implement rules of procedure and practice for cases before the Office and approve the use of forms and documents that will assist in managing cases coming before the Office;
- (8) Monitor and supervise the quality of administrative adjudication;

(9) Develop and implement a code of professional responsibility for Administrative Law Judges;

(10) Develop and implement annual performance standards for the management and disposition of cases assigned to Administrative Law Judges, which shall take account of subject matter and case complexity;

(11) Apply a pay scale and retention allowances equivalent to those that are available to Legal Service and Senior Executive Attorney Service attorneys in a manner designed to attract highly capable public and private sector attorneys to become Administrative Law Judges in the Office;

(12) Issue and transmit to the Mayor and the Council, not later than 90 days after the close of the first complete fiscal year of the Office's operation and each fiscal year thereafter, an annual report on the operations of the Office. The annual report shall include performance evaluations and case statistics for each Administrative Law Judge from the filing of a case to disposition.

(b) The Chief Administrative Law Judge may:

(1) Serve as an Administrative Law Judge in any case;

(2) Furnish Administrative Law Judges on a reimbursable basis to District of Columbia or other government entities not covered by this act;

(3) Accept and expend funds, grants, bequests, and gifts on behalf of the Office, and accept the donation of services that are related to the purpose of the Office unless such a donation would create a conflict of interest in violation of applicable law;

(4) Enter into agreements and contracts under law with any public or private entities or educational institutions;

(5) Develop and maintain a program for student interns and law clerks to work in the Office;

(6) Recommend to the Commission the proposal and promulgation of rules regulating the appointment, reappointment, discipline, and removal of Administrative Law Judges;

(7) Adopt, in accordance with section 6 of the Administrative Procedure Act, approved October 21, 1968 (D.C. Official Code § 2-505), rules that are necessary or desirable to facilitate implementation of this act, other than rules regulating the appointment, reappointment, discipline, and removal of Administrative Law Judges promulgated pursuant to section 14;

(8) Assess reasonable filing, copying, and other fees, and adopt rules for waiving or reducing fees for parties who, after careful review, are determined by the Office to be incapable of paying full fees; provided, that filing fees permitted under this subsection shall not be charged to the District of Columbia government or the United States;

(9) Collect and retain a portion of revenue paid in connection with any adjudicated case, such revenue to be maintained by the Chief Financial Officer in a non-lapsing

account to fund the administrative adjudication services provided by the Office, except that such funds shall only be collected and maintained in a manner consistent with safeguarding the integrity and independence of the decisional process in matters pending before the Office;

(10) Retain outside counsel, other than the Corporation Counsel, to represent the Office or any employee of the Office in his or her official capacity in actual or anticipated litigation;

(11) Implement a program for ongoing quality assurance and performance review; provided, that no such review shall require that an outcome in any case be altered;

(12) Issue and implement procedures, practices, and guidelines relating to the operations or responsibilities of the Office; and

(13) Exercise any other lawful authority to effectuate the purposes of this act.

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Sec. 9. Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings.

(a) There is established the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings. The Commission's mission shall be to ensure the recruitment and retention of a well-qualified, efficient, and effective corps of Administrative Law Judges in the Office.

(b) The Commission shall have final authority to appoint, reappoint, discipline, and remove Administrative Law Judges.

(c) No Administrative Law Judge shall be appointed to an initial term without the affirmative vote of a majority of the voting members of the Commission; provided, that the Commission shall appoint to an initial term as an Administrative Law Judge any hearing examiner employed by an agency to which this act becomes applicable if that person timely seeks the appointment and is eligible for the appointment pursuant to section 11(e).

New
§ 2-1831.07

Sec. 10. Commission members.

(a) The Commission shall consist of 3 voting members. The voting members of the Commission shall serve staggered terms, as provided in subsections (c) and (d) of this section. One voting member shall be appointed by the Mayor, one voting member shall be appointed by the Chairman of the Council of the District of Columbia, with the approval of a majority of the Council, and one voting member shall be appointed by the Chief Judge of the Superior Court of the District of Columbia. The Corporation Counsel, or his or her designee from within the ranks of the Senior Executive Attorney Service, and the Chief Administrative Law Judge shall serve as non-voting *ex officio* members of the Commission.

(b) A majority of the voting members of the Commission shall select its chairperson at the start of each fiscal year. In the absence of such a selection, the Commission member appointed by the Chief Judge of the Superior Court of the District of Columbia shall chair the

Commission. The Chairperson may designate another member to act for him or her in case of absence or other exigency. A majority of the Commission's voting members shall constitute a quorum.

(c) Except as provided in subsection (d) of this section, each member of the Commission shall serve a 3-year term and shall be eligible for reappointment. The terms of the first members of the Commission shall commence on May 1, 2003, and shall expire as provided in subsection (d) of this section. All subsequent terms for members of the Commission shall commence immediately upon the expiration of the previous term. If a vacancy exists after the start of any 3-year term of office, the person appointed to fill that vacancy shall be appointed to serve the unexpired portion of the term. If a member of the Commission leaves office before the expiration of his or her term, a new member may be appointed to serve out the remainder of the term.

(d) The initial term of the voting member of the Commission appointed by the Mayor shall expire on April 30, 2004. The initial term of the voting member of the Commission appointed by the Chairman of the Council shall expire on April 30, 2005. The initial term of the voting member of the Commission appointed by the Chief Judge of the Superior Court of the District of Columbia shall expire on April 30, 2006.

(e) Members of the Commission shall not receive any salary or remuneration, but may receive reimbursement of reasonable expenses incurred in connection with their service on the Commission in accordance with applicable law.

(f) No voting member of the Commission shall be eligible for appointment as an Administrative Law Judge or Chief Administrative Law Judge while serving on the Commission and until the passage of at least 3 years from the termination of his or her service on the Commission. No voting member of the Commission shall appear as an attorney or otherwise participate in any professional or representative capacity in any case pending before the Office while serving on the Commission and until the passage of at least 3 years from the termination of his or her service on the Commission. This section does not disqualify any firm or person, other than the member or former member of the Commission, from representing a party in any adjudicated case.

New
§ 2-1831.08

(g) No member of the Commission shall exercise his or her authority, or shall act in any other manner, to direct the outcome of any case pending before the Office.

Sec. 11. Administrative Law Judges.

(a) Administrative Law Judges shall be accountable and responsible for the fair, impartial, effective, and efficient disposition of cases to which they are assigned by the Chief Administrative Law Judge.

(b) An Administrative Law Judge shall be appointed to the Excepted Service as a statutory officeholder pursuant to section 908 of the District of Columbia Government

Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.08), upon the affirmative vote of a majority of the voting members of the Commission after a selection process in accordance with rules promulgated pursuant to section 14(a) and (b).

(c) The initial term of office of an Administrative Law Judge shall be 2 years, at the end of which the Administrative Law Judge shall be eligible for reappointment to a term of 10 years. At the expiration of any 10-year term of office, an Administrative Law Judge shall be eligible for reappointment by the Commission to a new term of 10 years. Non-reappointment of an Administrative Law Judge shall not be deemed to be discipline or removal of the Administrative Law Judge.

(d) To be eligible for appointment, an Administrative Law Judge shall:

(1) At the time of appointment, be a member in good standing of the District of Columbia Bar and remain in good standing throughout his or her tenure as an Administrative Law Judge;

(2) If appointed to a position at grade 15 or below, be subject to the residency requirements applicable to attorneys pursuant to section 906(c) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.06(c));

(3) If appointed to a position at a level higher than grade 15, be subject to the residency requirements placed on members of the Senior Executive Attorney Service pursuant to section 859 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.59);

(4) Have at least 5 years experience in the practice of law, including experience with court, administrative, or arbitration litigation;

(5) Possess judicial temperament, expertise, experience, and analytical and other skills necessary and desirable for an Administrative Law Judge; and

(6) Satisfy all other requirements specified in rules promulgated pursuant to section 14(a) and (b);

(e) An individual occupying a position as a hearing officer in an agency at the time the agency becomes subject to this act is eligible to be appointed as an Administrative Law Judge in the Office; provided, that he or she satisfies all the requirements for appointment as an Administrative Law Judge specified in this act and in the rules promulgated pursuant to this act.

(f) No hearing officer shall be required to accept an appointment as an Administrative Law Judge pursuant to subsection (e) of this section. Any hearing officer who is not appointed or is ineligible to be appointed as an Administrative Law Judge shall be reassigned, without reduction in grade or step, to another position within the agency employing that individual, or by the Mayor to a position in another agency.

(g) Any Administrative Law Judge appointed pursuant to the authority of subsection (e) of this section who is not reappointed after expiration of his or her initial 2-year term may be appointed to the Legal Service, and be placed in a position in the agency that employed the individual immediately before he or she accepted the appointment as an Administrative Law Judge or in any other position designated by the Corporation Counsel.

(h) The compensation of an Administrative Law Judge shall not exceed the compensation level available to attorneys of the Senior Executive Attorney Service created by section 853 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.53).

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Sec. 12. Powers, duties, and liability of Administrative Law Judges.

(a) An Administrative Law Judge shall:

- (1) Participate in the program of orientation and in programs of continuing legal education for Administrative Law Judges required by the Chief Administrative Law Judge;
- (2) Meet annual performance standards applicable to his or her duties;
- (3) Engage in no conduct inconsistent with the duties, responsibilities, and ethical obligations of an Administrative Law Judge;
- (4) Not be responsible to, or subject to the supervision or direction of, an officer, employee, attorney, or agent engaged in the performance of investigative, prosecutorial, or advisory functions for another agency;
- (5) Fully participate in Office management committees and management activities to set and steer policies relating to Office operations, including, without limitation, personnel matters;
- (6) Supervise, direct, and evaluate the work of employees assigned to him or her;
- (7) Conform to all legally applicable standards of conduct;
- (8) Decide all cases in an impartial manner;
- (9) Devote full-time to the duties of the position and shall not:
 - (A) Engage in the practice of law; or
 - (B) Perform any duties that are inconsistent with the duties and responsibilities of an Administrative Law Judge;
- (10) Cooperate with the Executive Director of the Office to achieve efficient and effective administration of the Office; and
- (11) Take an oath of office, as required by law, prior to the commencement of duties.

(b) In any case in which he or she presides, an Administrative Law Judge may:

- (1) Issue subpoenas and may order compliance therewith;
 - (2) Administer oaths;
 - (3) Accept documents for filing;
 - (4) Examine an individual under oath;
 - (5) Issue interlocutory orders and orders;
 - (6) Issue protective orders;
 - (7) Control the conduct of proceedings as deemed necessary or desirable for the sound administration of justice;
 - (8) Impose monetary sanctions for failure to comply with a lawful order or lawful interlocutory order, other than an order that solely requires payment of a sum certain as a result of an admission or finding of liability for any infraction or violation that is civil in nature;
 - (9) Suspend, revoke, or deny a license or permit;
 - (10) Perform other necessary and appropriate acts in the performance of his or her duties and properly exercise any other powers authorized by law;
 - (11) Engage in or encourage the use of alternative dispute resolution;
 - (12) When authorized by rules promulgated pursuant to section 6 of the Administrative Procedure Act (D.C. Official Code § 2-505), issue administrative inspection authorizations that authorize the administrative inspection and administrative search of a business property or premises, whether private or public, and excluding any area of a premises that is used exclusively as a private residential dwelling. Subject to the exclusions of this paragraph, property (including any premises) is subject to administrative inspection and administrative search under this paragraph only if there is probable cause to believe that:
 - (A) The property is subject to one or more statutes relating to the public health, safety, or welfare;
 - (B) Entry to said property has been denied to officials authorized by civil authority to inspect or otherwise to enforce such statutes or regulations; and
 - (C) Reasonable grounds exist for such administrative inspection and search; and
 - (13) Exercise any other lawful authority.
- (c) Any rule promulgated pursuant to subsection (b)(12) of this section shall include all protections provided by Rule 204 of the Superior Court of the District of Columbia Rules of Civil Procedure.
- (d) A person may not refuse or decline to comply with a lawful interlocutory order or lawful order issued by an Administrative Law Judge.
- (e) In addition to any other sanctions that an Administrative Law Judge may lawfully impose for the violation of any order or interlocutory order, an Administrative Law Judge, or a party in interest in an adjudicated case, may apply to any judge of the Superior Court of the District of Columbia for an order issued on an expedited basis to show cause why a person

should not be held in civil contempt for refusal to comply with an order or an interlocutory order issued by an Administrative Law Judge. On the return of an order to show cause, if the judge hearing the case determines that the person is guilty of refusal to comply with a lawful order or interlocutory order of the Administrative Law Judge without good cause, the judge may commit the offender to jail or may provide any other sanction authorized in cases of civil contempt. A party in interest may also bring an action for any other equitable or legal remedy authorized by law to compel compliance with the requirements of an order or interlocutory order of an Administrative Law Judge.

New
§ 2-1831.10

(f) An Administrative Law Judge has no authority to commit any person to jail.

(g) An Administrative Law Judge shall be subject to suit, liability, discovery, and subpoena in a civil action relating to actions taken and decisions made in the performance of duties while in office on the same basis as a judge of the Superior Court of the District of Columbia.

Sec. 13. Reappointment and discipline of Administrative Law Judges.

(a) No Administrative Law Judge shall be reappointed upon the expiration of any 2-year or 10-year term without the affirmative vote of a majority of the voting members of the Commission.

(b) At least 6 months before the expiration of any term, an Administrative Law Judge seeking reappointment to a new term shall file a statement with the Commission specifying that he or she requests reappointment to a new term. For any Administrative Law Judge who timely files such a statement, the Chief Administrative Law Judge shall prepare a record of the Administrative Law Judge's performance with regard to that judge's efficiency, efficacy, and quality of performance over the period of his or her appointment. The record shall be prepared and transmitted to the Commission within 120 days of the filing of the statement. At a minimum, the record shall contain at least one year of decisions authored by the Administrative Law Judge, data on how the Administrative Law Judge has met applicable objective performance standards, the Chief Administrative Law Judge's recommendation as to whether the reappointment should be made, and any other information requested by one or more members of the Commission. The members of the Commission shall consider all information received with regard to reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless it is determined that the recommendation is not founded on substantial evidence.

(c) The voting members of the Commission shall vote on the request for reappointment prior to the expiration of the Administrative Law Judge's term, but no earlier than 60 days prior to such expiration. A reappointment approved by the Commission is effective upon expiration of the previous appointment.

(d) During a term of office, an Administrative Law Judge shall be subject to discipline and removal, only for cause, with a right to notice and a hearing before the Commission pursuant to this act and rules issued pursuant to section 14(a) and (b). An Administrative Law Judge's unexcused failure to meet annual performance standards in any 2 years within a 3-year period shall be among the grounds constituting cause for removal.

New
§ 2-1831.11

(e) Any disciplinary action against an Administrative Law Judge proposed by the Chief Administrative Law Judge that would result in a suspension of 10 days or more, a reduction in grade, or removal of the Administrative Law Judge shall take effect only if a majority of the voting members of the Commission approve the action.

Sec. 14. Rules governing appointment, reappointment, and discipline of Administrative Law Judges.

(a) In accordance with section 6 of the Administrative Procedure Act (D.C. Official Code § 2-505), the Mayor shall promulgate initial rules governing the appointment, reappointment, discipline, removal, and qualifications of Administrative Law Judges within 180 days of the effective date of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) Upon convening, or at anytime thereafter, the Commission may amend or repeal, in whole or in part, or may add to, the initial rules promulgated under the authority of subsection (a) of this section, in accordance with section 6 of the Administrative Procedure Act (D.C. Official Code § 2-505). Any proposed rule changes shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. The Chief Administrative Law Judge may at any time request that the Commission review and consider proposed rule changes authorized by this subsection. The Commission also, on its own initiative, or upon recommendation of the Chief Administrative Law Judge, may promulgate emergency rules, valid for not more than 120 days, in the limited circumstances permitted by section 6(c) of the Administrative Procedure Act (D.C. Official Code § 2-505(c)).

(c) Any rules promulgated pursuant to subsections (a) and (b) of this section shall be designed to competitively recruit and retain highly qualified, effective, and efficient Administrative Law Judges from the public and private sectors. Any such rules:

(1) Shall require that Administrative Law Judges meet the qualifications established in section 11(d)(1) through (5);

(2) May prescribe the passing of a qualifying examination as a minimum, but not exclusive, requirement for appointment;

(3) May prescribe additional qualifications for the purpose of ensuring the appointment of well-qualified, efficient, and effective Administrative Law Judges;

New
§ 2-1831.12

(4) Shall require that all Administrative Law Judge positions (except positions subject to section 11(e)) be timely advertised in a portion of a daily or weekly periodical that is likely to be seen by highly qualified public and private sector attorneys in the District of Columbia who are seeking or considering positions as attorneys or administrative law judges in the government. This requirement shall not apply to a position open only to Administrative Law Judges already appointed pursuant to section 13.

(d) Rules promulgated pursuant to subsections (a) and (b) of this section shall govern the process of selecting Administrative Law Judges.

Sec. 15. Executive Director and other personnel.

(a) There shall be an Executive Director of the Office. The Executive Director shall be responsible for the administration of the Office, subject to the supervision of the Chief Administrative Law Judge.

(b) The Executive Director shall be appointed by the Chief Administrative Law Judge as a statutory employee in the Excepted Service pursuant to section 908 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.08), and shall serve at the pleasure of the Chief Administrative Law Judge. In making the appointment, the Chief Administrative Law Judge shall consider experience and special training in administrative, operational, and managerial positions and familiarity with court and administrative hearing procedures and operations. The Executive Director need not be an attorney and may not concurrently hold an appointment as an Administrative Law Judge appointed under the authority of section 11(b).

(c) The Executive Director shall be a resident of the District of Columbia or become a resident not more than 180 days after the date of appointment, and shall remain a resident, unless temporarily or permanently exempted from these requirements by the Mayor for good cause.

(d) The Office shall have a Clerk and may have deputy clerks who shall perform such duties as may be assigned to them. The Clerk and deputy clerks may be authorized to administer oaths, issue subpoenas, and perform other appropriate duties.

(e) With the approval of the Chief Administrative Law Judge, the Executive Director may appoint and fix the salary of any attorney and non-attorney personnel appointed pursuant to the authority of this act, other than Administrative Law Judges, except that no individual appointed by the Executive Director may be paid at a rate greater than the rate of pay for the Executive Director. Law clerks and attorneys employed by the office in a capacity other than as an Administrative Law Judge shall be appointed non-competitively as Excepted Service attorneys under section 906 of the District of Columbia Government Comprehensive Merit

New
§ 2-1831.13

Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.06), and shall not be appointed to the Legal Service or Senior Executive Attorney Service.

(f) The Executive Director shall not have supervisory authority over any person appointed as an Administrative Law Judge.

Sec. 16. Interaction of the Office with other agencies; other procedural matters.

(a) All components of the District of Columbia government shall cooperate with the Chief Administrative Law Judge, the Executive Director, and Administrative Law Judges in the discharge of their duties.

(b) The Office shall be subject to audit and examination on the same basis as other District of Columbia government agencies.

(c) When a case is brought before the Office, any agency that is a party shall take no further decisional action with respect to the subject matter in issue, except in the role of a party litigant or with the consent of all parties, for so long as the Office has jurisdiction over the proceeding.

(d) All documents filed in any case before the Office shall be available to the public for review unless a statute, protective order, or other legal requirement prohibits disclosure.

(e) Beginning November 15, 2004, and by November 15 of each year thereafter, the Chief Administrative Law Judge shall transmit to the Mayor, the Council, and each agency to which this act applies, a written summary of the Office's caseload during the previous fiscal year that is attributable to any provision of law administered by or under the jurisdiction of each agency. The summary shall also include comparative data on caseload from prior fiscal years. Each agency to which this act applies shall provide a written response to the summary to the Mayor, the Council, and the Office within 30 calendar days of issuance of the summary. The response shall state whether the agency knows or believes there is a reasonable possibility that such caseload will increase or decrease by more than 10% in the current or following fiscal year based on any planned or ongoing agency actions, or any other reason, and specifying the anticipated amount of the increase or decrease and the reasons therefor. For purposes of this subsection, the existence of a 10% or greater increase or decrease shall be measured pursuant to rules promulgated under this act.

(f) Prior to any agency promulgating a rule (other than an emergency rule) that will materially affect the number or types of cases heard by the Office, the agency director shall consult with the Chief Administrative Law Judge regarding fiscal and operational impact of the proposed rule, and shall submit to the Chief Administrative Law Judge a statement containing the agency's projections regarding increases in case volume and case complexity likely to follow promulgation of the rule.

(g) The director of any agency that becomes subject to this act shall direct that all employees of the agency provide the Office with any financial and programmatic information

requested by the Office relating to any operational or personnel responsibilities of the Office, including, without limitation, any information the Chief Administrative Law Judge deems necessary in order to absorb the transfer of an agency's adjudication function into the Office. The information shall be provided promptly and in no event later than the 15th day after the request is received. The Chief Financial Officer shall also issue the directive called for in this subsection with respect to the employees under his or her control.

(h)(1) Whenever any applicable law or regulation requires or permits the filing in the Office of an affidavit or other writing subscribed to under oath, the subscriber, in lieu of a sworn or notarized statement, may submit a written declaration subscribed as true under penalty of perjury in substantially the following form: New
§ 2-1831.14

“I declare (or certify, verify, or state), under penalty of perjury, that the foregoing is true and correct. Executed on (date).

(Signature)”.

(2) Signing such a statement shall be considered the taking of an oath or affirmation for purposes of sections 401 and 403 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code §§ 22-2402 and 22-2404).

(i) No person outside the Office shall participate in or in any way influence or attempt to influence, except through the ordinary litigation process, the fair and independent decisionmaking process in an adjudicated case before the Office.

Sec. 17. Representation of parties in adjudicated cases before the Office.

New
§ 2-1831.15

(a) An individual may represent himself or herself before the Office.

(b) An individual or other party may be represented before the Office by an attorney authorized to practice law in the District of Columbia, or may be assisted by others in such a manner and under such circumstances as are permitted by law, or as may be permitted under the rules of the Office.

(c) A corporation, partnership, limited partnership, or other private legal entity may be represented before the Office by a duly authorized officer, director, general partner, or employee.

New
§ 2-1831.16

(d) An agency may be represented before the Office by the Corporation Counsel, an attorney assigned to the agency, or by a duly authorized agency employee when consistent with applicable law and rules.

(e) The Office shall promulgate rules regulating attorneys practicing before the Office.

Sec. 18. Conflicts of regulations.

Unless a federal law or regulation or District of Columbia statute requires that a particular federal or District of Columbia procedure be observed, this act and the rules

promulgated pursuant to this act shall take precedence in the event of a conflict with other authority with regard to any issue involving or relating to procedures of the Office.

Sec. 19. Judicial review and administrative appeals.

(a) An order of the Office shall be effective upon its issuance, unless stayed by an Administrative Law Judge *sua sponte* or upon motion of any party. Any party may file a motion for reconsideration of an order or a motion for a new trial within 10 calendar days of service of an order. Unless otherwise ordered by an Administrative Law Judge, the filing of such a motion shall not stay the effectiveness of an order. If such a motion is timely filed, the order shall not be final for purposes of judicial review until the motion is ruled upon by the Administrative Law Judge or is denied by operation of law.

(b) Any agency, board, commission, or body of an agency identified in Title III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1803.01 *et seq.*), other than the Board of Appeals and Review, shall retain jurisdiction to entertain and determine appeals from orders of Administrative Law Judges, as granted in that act. The Rental Housing Commission shall have jurisdiction to review orders of the Office in all adjudicated cases in which the Rent Administrator, or his or her designee, would have had jurisdiction but for the enactment of this act.

(c) Except as provided in subsection (b) of this section, any person suffering a legal wrong or adversely affected or aggrieved by any order of the Office in any adjudicated case may obtain judicial review of that order.

(d) Notwithstanding any other provision of law, any agency suffering a legal wrong or adversely affected or aggrieved by any order of the Office in any adjudicated case may obtain judicial review of that order.

(e) Judicial review of all orders of the Office in contested cases shall be in the District of Columbia Court of Appeals in accordance with the procedures and rules of that court.

(f) Judicial review of any order of the Office in a matter that is not a contested case shall be in accordance with other applicable law. New
§ 2-1831.17

(g) In all proceedings for judicial review authorized by this section, the reviewing court shall apply the standards of review prescribed in section 11 of the Administrative Procedure Act (D.C. Official Code § 2-510). A reviewing court may not modify a monetary sanction imposed by an Administrative Law Judge if that sanction is within the limits established by law or regulation.

(h) Notwithstanding any other provision of law, neither the Office nor an Administrative Law Judge shall be a party in any proceeding brought by a party in any court seeking judicial review of any order of the Office, or of any order of an agency head or governing board, commission, or body of an agency that decides any appeal from any order of

the Office. Only the parties before the Office or any other party permitted to participate by the reviewing court shall be parties in any such proceeding for judicial review.

Sec. 20. Advisory Committee.

(a) There is established an Advisory Committee to the Office of Administrative Hearings.

(b) The Advisory Committee shall consist of the following 8 persons:

- (1) The Mayor or his or her designee;
- (2) The Chairman of the Council or his or her designee;
- (3) The Corporation Counsel or his or her designee;
- (4) Two agency heads appointed by the Mayor, or their designees, from agencies with cases coming before the Office of Administrative Hearings;
- (5) Two members of the District of Columbia Bar, appointed by the Mayor, neither of whom shall be employed by the District of Columbia government; and
- (6) A member of the public, appointed by the Mayor, who is not a member of the District of Columbia Bar.

(c) The Mayor shall chair the Advisory Committee, or may designate an Advisory Committee Chair from among its members.

(d) A member of the Advisory Committee may not receive compensation for service on the Advisory Committee, but is entitled to reimbursement for travel expenses in accordance with applicable law and regulations.

New
§ 2-1831.18

(e) The Advisory Committee shall:

- (1) Advise the Chief Administrative Law Judge in carrying out his or her duties;
- (2) Identify issues of importance to Administrative Law Judges and agencies that should be addressed by the Office;
- (3) Review issues and problems relating to administrative adjudication;
- (4) Review and comment upon the policies and regulations proposed by the Chief Administrative Law Judge; and

(5) Make recommendations for statutory and regulatory changes that are consistent with advancing the purposes of this act.

New
§ 2-1831.19

(f) The Advisory Committee shall meet at a regular time and place to be determined by the committee.

(g) The Chief Administrative Law Judge shall confer with the Advisory Committee at its meetings and shall provide such information as the Advisory Committee lawfully may request.

Amend
§ 1-609.08

Sec. 21. Study of and report on Bureau of Traffic Adjudication.

The Mayor shall conduct a study to consider methods to improve the quality of adjudications within the Bureau of Traffic Adjudication at the Department of Motor Vehicles. This study shall review best practices in other jurisdictions and examine issues such as staffing levels, timeliness of decisions, caseloads, and qualifications of hearing examiners. The Mayor shall provide a report to the Council, including recommendations for legislative and operational changes, by October 1, 2002.

Sec. 22. Appropriations.

This act shall be subject to appropriations. There are authorized to be appropriated from the general fund and other revenues of the District of Columbia funds necessary to carry out the purposes of this act.

Amend
§ 2-1803.01

Sec. 23. Conforming amendments.

(a) Section 908 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.08), is amended as follows:

Amend
§ 2-1803.02

(1) Subsection (m) is amended by striking the word "and" at the end.

(2) Subsection (n) is amended by striking the period at the end and inserting the phrase "; and" in its place.

(3) A new subsection (o) is added to read as follows:

“(o) The Chief Administrative Law Judge, the Administrative Law Judges, and the Executive Director of the Office of Administrative Hearings.”.

(b) Title III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1803.01 *et seq.*), is amended as follows:

(1) Section 301 (D.C. Official Code § 2-1803.01) is amended by striking the word "The" in the first sentence and inserting the phrase “Except as provided in section 19 of the Office of Administrative Hearings Establishment Act of 2001, passed on 2nd reading on November 6, 2001 (Enrolled version of Bill 14-208), the” in its place.

(2) Section 302 (D.C. Official Code § 2-1803.02) is amended by striking the word "Any" in the first sentence and inserting the phrase “Except as provided in section 19 of the Office of Administrative Hearings Establishment Act of 2001, passed on 2nd reading on November 6, 2001 (Enrolled version of Bill 14-208), any" in its place.

Sec. 24. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 25. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia